



# ಕರ್ನಾಟಕ ರಾಜ್ಯಪತ್ರ

## ಅಧಿಕೃತವಾಗಿ ಪ್ರಕಟಿಸಲಾದುದು ಏಂಎಡೆ ರಾಜ್ಯ ಪ್ರತಿಕೆ

ಭಾಗ - ೪೯  
Part -IV A

ಬೆಂಗಳೂರು, ಶನಿವಾರ, ೨೦, ಫೆಬ್ರವರಿ, ೨೦೨೧ (ಫಾಲ್ಗುಣ, ೧೦, ಶಕಾವರ್ಷ, ೧೯೪೨)  
BENGALURU, SATURDAY, 20, FEBRUARY, 2021 (PHALGUNA ,01, SHAKAVARSHA, 1942)

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No. 200

N0. LAW-LAM/158/2020

Karnataka Government Secretariat,  
Vidhana Soudha,  
**Bangalore, dated:20.02.2021.**

### NOTIFICATION

The Government of Karnataka hereby proposes to make the following policy namely, -

### **KARNATAKA STATE DISPUTE RESOLUTION POLICY, 2021**

#### **Chapter I INTRODUCTION**

1. Disputes are a fact of life; they cannot be wished away. They are an obvious concomitant of ordinary life. More so in the performance of governance activities and conduct of business. Disputes are disruptive, unwelcome and divert resources away from the performance of core functions. They can be expensive and drain funds which could have been better utilized in developmental activities.
2. That the legal system has high pendency of cases, an overburdened judiciary, and the State is the biggest litigant, are regrettably undeniable realities. But what is more catastrophic is that disputes involving the State (often equated to “litigation”) are not only draining financial resources but are also eroding the legitimacy and trust that society had reposed in the State.
3. Since disputes are mostly unanticipated and come as an unwanted distraction, ad hoc measures are commonly relied upon, without realizing that firefighting will not cure the malady. Strategic planning and conscious implementation of short-term and long-term measures to deal with disputes has now become the need of the hour. Effectively conducting disputes can add significant value to the State and pave the way for economic growth.

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4. The Report of the 13<sup>th</sup> Finance Commission on “Improving Justice Delivery” made it mandatory for all States to frame Litigation Policies aimed at responsible litigation. The Supreme Court of India has emphasized time and again that there is a grave need for measures to be taken to tackle government litigation. Realizing the gravity of the situation, the present Policy aims to provide a vision on the way forward and mandates tangible measures to be taken by the stakeholders, to deal with disputes involving the State.
5. The first step is to encourage a shift in mindset – litigation is not the panacea for all disputes and “disputes” should certainly not be equated to “litigation”. Litigation is only one type of dispute resolution mechanism, one that has been overused, abused and should be strictly avoided unless absolutely necessary. The exigencies of the situation are to rely upon alternative mechanisms, use technology to enhance efficiencies and adopt creative problem-solving approaches to resolve conflicts and promote economic growth. With a view to encourage this change in perspective, the present Policy has moved away from being called a “State Litigation Policy” to the “State Dispute Resolution Policy”.

## **6. Impact of the Karnataka State Litigation Policy 2011:**

6.1. The Karnataka State Litigation Policy was first framed in 2011 and has since been in force. The 2011 Policy aimed to transform the government into an “efficient” and “responsible” litigant. It set out that the government would minimize litigation and eschew the “let-the-court-decide” approach. It desired to identify bottlenecks, remove unnecessary government cases and achieve prioritization in litigation.

6.2. As regards the impact of the Karnataka State Litigation Policy, a research study<sup>1</sup> published in 2018 gave a categorical finding that the Policy has not at all been implemented. The concept of “efficient” and “responsible” litigant is missing in the current process of dealing with Government Litigation. Most of the government lawyers are not even aware of the Karnataka State Litigation Policy because of lack of orientation programmes. There is no system of review or training, instruction or programme to educate stakeholders on the policy. Thus, the study found that there is no visible impact of the Litigation Policy in conduct or reduction of Government Litigation in the State of Karnataka. Therefore, there is a need to revise and reformulate foundational policy goals and implementation standards concerning government disputes. Hence the present policy.

The present Policy 2020 has been formulated in supersession of the 2011 policy.

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<sup>1</sup> “Impact Assessment of the Karnataka Litigation Policy and Karnataka Sakala Services Act 2011 in reducing Government Litigation in the State of Karnataka”, by National Law School of India University, Bengaluru under the Scheme for Action Research & Studies on Judicial Reforms, Ministry of Law & Justice, Government of India (2018), available at <https://doj.gov.in/sites/default/files/sakala%20services%20%20Act.pdf> (last accessed on 13.09.2020).

## 7. Policy Goals

7.1. The goal of the Policy is not novel. It is *to instill Responsibility, Accountability and Efficiency in the State's approach to conduct of disputes*. The Policy endeavors to provide clarity on what this means.

### 7.2. Responsibility

- 7.2.1. The Supreme Court of India has lamentably noted “*the propensity of Government Departments and public authorities to keep litigating through different tiers of judicial scrutiny*” as “*one of the reasons for docket explosion.*”<sup>2</sup> The Supreme Court has vociferously reminded that governments and their instrumentalities should not invoke the courts’ jurisdiction for resolution of trivial matters, which do not involve serious questions of law or which do not affect a large number of people or where the stakes are not high.<sup>3</sup>
- 7.2.2. *Responsibility* manifests as *performance* – the Stakeholders have a responsibility to understand their respective roles and perform their functions diligently, to use public funds for promoting development, and to be the brand ambassadors of the State. In their approach to disputes, they have a responsibility to reduce demands on judicial time, to represent diligently and accurately before the courts, and to resolve disputes – preferably amicably. Lack of responsibility in government officials shows as indifference and apathy, the financial and social costs of which are borne by the society.

### 7.3. Accountability

- 7.3.1. *Accountability* manifests as *decision-making*. Holding a place of power comes with responsibility and accountability. Accountability reflects ownership, initiative and involvement. It means bearing the consequences of one’s actions. On the other hand, lack of accountability shows as inaction.

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<sup>2</sup> *Director of Income Tax, New Delhi v. SRMB Dairy Farming Pvt Ltd:* (2018) 400 ITR 9 (SC).

<sup>3</sup> *Gurgaon Gramin Bank v. Khazani:* (2012) 8 SCC 781.

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7.3.2. It is unfortunate that government officials use litigation as a tool to escape accountability and pass the buck to the courts to decide disputes. To quote the 126<sup>th</sup> Report of the Law Commission of India on Government and Public Sector Undertaking Litigation Policy and Strategies, 1988:

*“2.1. Even though absurd policy resort to litigation cannot be checkmated, more often resort to court litigation is an escape route for accountability for decision. To illustrate an officer having been satisfied that the claim against the Government or the public sector undertaking is genuine, yet, to avoid taking an affirmative decision by a policy of do nothingness, the litigation is invited. Once the court intervenes, it is assumed that the concerned Department or the undertaking should not take any decision and leave it to the court to adjudicate the claim. The matter does not rest there. The indifference arising out of a lack of social audit encourages such officer to prefer an appeal if the decision is adverse and by vertical movement, the matter generally reaches the apex court. The officer continues to litigate at the cost of the public exchequer or the corporation itself. A social audit might reveal that more than half the litigation involving Government and public sector undertakings is the outcome of irresponsible indifference to the claim made against it or inability to take affirmative action.*

*7.1 Experience shows, and analysis of reported cases clearly lead to one conclusion, that the lack of accountability in the officer in whom the power vests to determine whether to initiate litigation or perpetuate the same by preferring appeals, is largely responsible for mounting litigation. This attitude is referable in-service matters to eccentric approach of officers sitting in vertical command position and utter non-compassionate attitude towards subordinates. In the matter of litigation with public, cases are not unknown where corrupt motives have been at the root of the tendency to continue litigation so as to exhaust the other side in the fond hope that he/she/it may, out of exasperation, be willing to grease the palms. There is a third independent cause generating this tendency to initiate or perpetuate litigation and that is to avoid taking decisions which, in the current culture,*

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*may lead to doubting the bona fides of the officer who has to take decision.”* (emphasis supplied)

- 7.3.3. In its judgment dated 11.09.2020, the Supreme Court reiterated yet again that the approach of bringing everything to the courts so that there is no responsibility in the decision-making process is an unfortunate situation that creates an unnecessary burden on the judicial system.<sup>4</sup> Henceforth, if there is a singular reason for which Stakeholders will be held accountable / liable, it is for mindlessly clogging the judiciary.
  
- 7.3.4. Accountability is crucial to good leadership and good governance; it is a must to enhance public trust. One of the ways in which accountability can be promoted is to have clearly defined roles and responsibilities with periodic performance evaluations.

#### 7.4. Efficiency

- 7.4.1. Efficiency is rooted in common sense, practicality and functionality. It is evaluated based on neutral standards like facts and figures, data and evidence. It is result-oriented. How the State handles its own organizational affairs and operations reflects its ability to govern people. If responsibility has been discharged efficiently, then one will not fear the consequences or evade Accountability.
  
- 7.4.2. All Stakeholders should strive to enhance efficiency in the discharge of their responsibilities. There should be efficiency in managing data, in performing duties in a time-bound manner and in keeping the costs low. The focus is on using the least resources to gain maximum results.

### 8. Policy Objectives

- 8.1. The objectives of the Policy are: *Prevention, Management and Resolution of disputes.* Some measures have been stated in the Policy that will achieve these objectives and promote the goals. But it is imperative that Stakeholders strategically design customized systems necessary for implementation of these objectives. In the absence of such an

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<sup>4</sup> *National Co-operative Development Corporation v. CIT*, Civil Appeal Nos. 5105-5107 of 2009, available at [https://main.sci.gov.in/supremecourt/2007/8001/8001\\_2007\\_36\\_1501\\_23901\\_Judgement\\_11-Sep-2020.pdf](https://main.sci.gov.in/supremecourt/2007/8001/8001_2007_36_1501_23901_Judgement_11-Sep-2020.pdf) (last accessed on 13.09.2020).

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approach, Stakeholders are bound to rely upon ad hoc firefighting measures that do not yield lasting solutions.

8.2.In order to design systems and establish processes, Stakeholders must adopt measures that are SMART<sup>5</sup> – Specific, Measurable, Assignable, Realistic, Time-bound. The systems must then map the objectives and measures to assess performance. In implementing this Policy, the Stakeholders ought to be guided by the values of fairness and non-arbitrariness; integrity and fearlessness; sincerity; timeliness and responsiveness; transparency; resolve; consistency; discipline.

## **9. Policy Structure and Responsibilities**

9.1.This Policy mandates the implementation of several measures by various Stakeholders to achieve the Policy objectives. It is the duty and responsibility of each Stakeholder and individual actor specified in this Policy to incorporate its principles in their day-to-day functioning. Some measures require Stakeholders (especially Stakeholder Representatives) to establish frameworks and design systems within their own office/department. It is also the duty and responsibility of each Stakeholder Representative, viz. Heads of Departments, Advocate General, Heads of Legal Cells, Administrative Officers, Director of Prosecution, Deputy Commissioner of every District etc., to ensure specific implementation of the Policy by designing systems that achieve the objectives of this Policy. This Policy provides the foundation and the impetus for Stakeholders and Stakeholder Representatives to implement measures that promote the Policy objectives. The Policy is therefore required to be widely circulated and adopted; Stakeholders must be aware and seek necessary training to implement Policy objectives. Further, the implementation of the Policy must be reviewed periodically.

9.2.Each chapter in this Policy aims at taking implementable measures that address prevailing problems in managing government disputes. Chapter 2 describes the various Stakeholders involved in government disputes and their role in conducting or administering government disputes. Chapter 3 points that lack of systematic performance evaluation by Stakeholders is one of the chief reasons why the government dispute system is unable to identify problems and devise long-lasting solutions. This chapter emphasizes the importance of

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<sup>5</sup> The acronym was first used by Mr. George T. Doran in “*There's a S.M.A.R.T. way to write management's goals and objectives*”, Management Review (1981). It is however commonly associated with Mr. Peter Drucker’s “*Use S.M.A.R.T. goals to launch management by objectives plan*”, Tech Republic (1955).

establishing performance indicators and evaluating performance based on key operation metrics and budgeting considerations. Further it provides for the establishment of an Empowered Committee to monitor the implementation of this Policy and undertake performance evaluation at a systemic level. Chapter 4 highlights the importance of data management for efficient running of a government dispute system. This chapter lays out the essential components of a data management system and strategy to be evolved by each Stakeholder Representative. Chapter 5 mandates and encourages the use of technology for data and workflow management. This chapter provides for the establishment of Karnataka Government Dispute Management IT Cell” (“IT Cell”) to create technological infrastructure, in consultation with stakeholders, for managing government disputes. Chapter 6 recommends reforms for improving conduct of government disputes. It also directs employment of risk management systems and strategies to prioritize cases and assist work allocation. Further, to assure quality of representation, it is recommended that appointment of Law Officers conforms to the standard set by the Hon’ble Supreme Court. Chapter 8 mandates the use of Alternative Dispute Resolution (ADR) by the government in dispute prevention and dispute resolution. It directs the establishment of Dispute Resolution Boards in each department to authorize representation of Law Officers and approve settlement terms. The Chapter also provides for the formation of a Working Group led by the Advocate General, to assist each State Department in formulating an ADR strategy to identify suitable disputes for ADR and participate in it effectively. Finally, Chapter 9 collates the implementable measures laid down by this Policy and wide publication and extensive awareness generation of this Policy amongst Stakeholders.

10. This Policy heavily asserts the importance of implementation of measures by all Stakeholders without which it will remain a mere paper goal. To this end, Stakeholders must identify their obligations under this Policy and take initiatives to frame suitable designs and frameworks in line with the Policy objectives. This Policy must be used by Stakeholders to guide their efforts towards enhancing efficiency, fulfilling responsibility and ensuring accountability.

## **Chapter II**

### **STAKEHOLDERS AND STAKEHOLDER REPRESENTATIVES**

1. The purpose of this Chapter is to set out the scope and applicability of this Policy and list the actors to whom it is applicable.
2. This Policy is applicable to all disputes involving the Departments of the Government of Karnataka. However, PSUs, Statutory Bodies and instrumentalities of State under Article 12 of the Constitution of India are encouraged to apply the principles contained herein and treat this as a Model Policy for their functioning. The disputes concerned include those involving questions of public law, commercial or contractual matters, service law matters, criminal cases or any other matters. It also applies to inter-se disputes between two Departments of the State. It applies to all disputes whether they are pending before any Court or Tribunal, arbitrations, lok adalats and also to those disputes that involve the State as quasi-judicial authorities.
3. Given the system structure, the actors involved include: (i) the State, where the disputes originate (ii) lawyers / law officers who represent the State (iii) actors who have administrative control of the law officers (iv) actors who discharge administrative functions. Thus, the Stakeholders to whom this Policy applies are:
  - a. Departments of the Government
  - b. Legal Cells
  - c. Advocate General
  - d. Directorate of Prosecution and Government Litigation
  - e. Deputy Commissioners
  - f. Law Officers
  - g. Offices of the Administrative Officers

Each of the above is hereafter referred to as “Stakeholder” and collectively as “Stakeholders”. Each of the actors of the Stakeholders are referred to as “individual actors”. The Stakeholders who head or represent other actors or exercise administrative control are referred to as “Stakeholder Representatives”. They have a duty to implement this Policy. Stakeholder Representatives for the purpose of the Policy are:

- a. Heads of Departments
- b. Heads of Legal Cells

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- c. Advocate General
  - d. Director of Prosecution and Government Litigation
  - e. Deputy Commissioners
  - f. Administrative Officers
4. This Policy concerns itself with the role of the State as a litigant, as a party to the dispute. It therefore does not deal with other independent wings of governance of the State, such as the judiciary or the police department (investigation).
5. A brief description of the Stakeholders is given below:
- 5.1. Departments of the Government of Karnataka (State)**
- 5.1.1. The Karnataka Government (Allocation of Business) Rules, 1977 classifies and distributes business between the various departments set out in the Schedule to the Rules.
- 5.1.2. The Heads of Departments are the Stakeholder Representatives with respect to the departments.
- 5.1.3. With respect to disputes, the duties of the Heads of Departments are provided under Rule 23 of the Conduct of Litigation Rules, 1985 (hereafter “CLR Rules”) as follows:
- a. To keep effective watch and control over the litigation relating to their respective department.
  - b. To maintain individual files in respect of every case relating to their respective departments and make necessary arrangements to watch the progress of every case by entrusting such work to officers of senior cadre.
  - c. To personally supervise the progress made in each case at least once every month.
  - d. To ensure that all necessary documents and information are given to the Law Officers and placed before the courts.

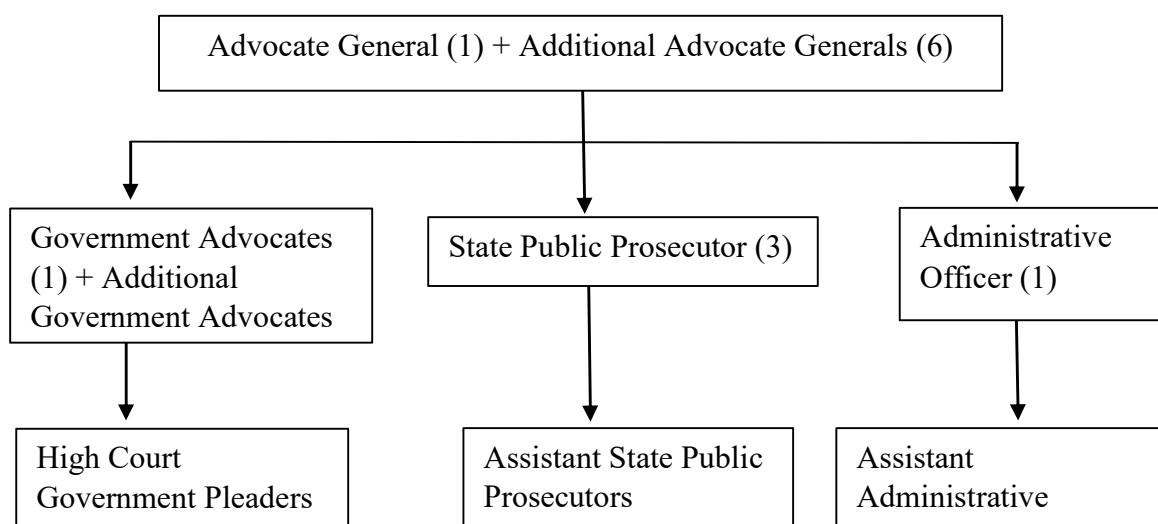
## 5.2.Legal Cells

- 5.2.1. Legal Cells are constituted vide Government Order bearing No. DPAR 425 SGO 95 dated 01.01.1996 for the purpose of coordinating between the State and the Law Officers.
- 5.2.2. Heads of Legal Cells are the Stakeholder Representatives of Legal Cells.

## 5.3.Office of the Advocate General

- 5.3.1. The Advocate General is appointed by the Governor of the State under Article 165 of the Constitution of India to advise the Government in all legal matters and to represent the State Government before the High Courts and the Supreme Court of India. The Advocate General is under the administrative control of the Law Department as per Rule 4 of the Karnataka Law Officers (Appointment and Conditions of Service), Rules 1977 (hereafter “KLO Rules”). In order to assist the Advocate General, the Government may also appoint Additional Advocate Generals under Article 162 of the Constitution.
- 5.3.2. The Advocate General is a Stakeholder Representative for the purposes of this Policy.

### Organizational Structure of the Office of the Advocate General



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#### **5.4.Deputy Commissioners**

- 5.4.1. Deputy Commissioners of districts play a vital role in the appointment of Law Officers at the district level as per Rules 24 & 26 of the KLO Rules. They are Stakeholder Representatives for the purpose of this Policy.
- 5.4.2. Rule 22 of the CLR Rules states the duties of Deputy Commissioners with respect to disputes involving the State. Functions include:
- a. To keep effective control over Government litigation relating to their respective districts irrespective of the Government Department from where the cases emanate, and to supervise its progress.
  - b. To make arrangements and ensure that the authorities provide the necessary instructions to the Law Officers.
  - c. To ensure that court decrees are complied with and to inform Heads of Departments about the decrees that may be passed by courts.

#### **5.5.Directorate of Prosecutions and Government Litigation**

- 5.5.1. The “Directorate of Prosecutions” was established on the basis of recommendations originally made in the 14<sup>th</sup> Report of the Law Commission of India on Reform of Judicial Administration (1958)<sup>6</sup> and subsequently reiterated in the 154<sup>th</sup> and 197<sup>th</sup> Law Commission of India Reports, to separate Prosecutors from the Police Department and to establish an independent Prosecution Department which is responsible for the conduct of Government Litigation in criminal courts.
- 5.5.2. By G. O. No. Law 123 LAG 83 (I) Bangalore dated 12.12.1983, civil litigation pertaining to the State and State Entities at the Taluk level was also entrusted to Assistant Public Prosecutors. The Directorate was accordingly re-designated as the “Directorate of Prosecutions and Government Litigation” (hereafter “DoP”). The DoP is under the administrative control of the Home Department.
- 5.5.3. The DoP is an independent body responsible for the following:
- a. Arranging for conduct of prosecution in criminal cases on behalf of the State in criminal courts up to and including the Sessions Court.

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<sup>6</sup> 14th Report of the Law Commission (1958), Volume II, Chapter 35, Page 765.

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- b. To review judgments and orders in acquittal and discharged cases and recommend preferring appeals/revisions.
  - c. To furnish information on criminal cases to the complainant and witness with respect to the conduct of government litigation in which the State is a party.
  - d. Arranging for conduct of Government Civil Litigation in civil suits on behalf of the State in Courts of Civil Judge (Jr. Dn) and Judicial Magistrate First Class Courts in the entire State.
  - e. Advise the police on cases.
- 5.5.4. The DoP is headed by the Director of Prosecutions and Government Litigation. The Director supervises Public Prosecutors, Additional Public Prosecutors and Assistant Public Prosecutors conducting cases up to the sessions courts and is therefore a Stakeholder Representative for the purpose of this Policy.

#### **5.6. Law Officers:**

Law Officers are the Advocates who represent the State before various courts, as defined and appointed under the KLO Rules. They include:

##### **5.6.1. Law Officers representing the Government before the Supreme Court**

The Advocates on Record and the Associate Advocates are appointed by the State to oversee both civil and criminal cases involving the State before the Supreme Court of India. They are governed by Chapter IV of the KLO Rules and Chapter V of the CLR Rules.

##### **5.6.2. Law Officers supervised by the Advocate General**

The Law Officers supervised by the Advocate General are governed by Chapter V of the KLO Rules. Their functions include: assist the Advocate General; take charge of and conduct the cases allotted to them by the Advocate General; draft necessary pleadings; and furnish opinions regarding fitness of the case for appeals. A flowchart indicating the hierarchy and current numbers of Law Officers is provided above under the heading “Office of the Advocate General”.

#### 5.6.3. Law Officers supervised by the Deputy Commissioners of districts

- a. Law Officers supervised by the Deputy Commissioners include District Government Pleaders, Additional District Government Pleaders and Assistant Government Pleaders who represent the State at the district level. They are appointed under Rule 26 of the KLO Rules by the Law Department, in consultation with the respective Deputy Commissioner and District Judge and are governed by Chapter VII of the KLO Rules. Their main function is to represent the State in cases before the respective district to which they are appointed.
- b. As per Rule 6 of the KLO Rules, Deputy Commissioners are required to review their work in consultation with the respective District Judge and submit a report on the same to the Law Department.

#### 5.6.4. Law Officers under the supervision of the Director of Prosecution and Government Litigation

- a. The Public Prosecutors and Additional Public Prosecutors are the Law Officers under the administrative control of the Director of Prosecution and Government Litigation as per Rule 4 of the KLO Rules. They are governed by Chapter VI of the KLO Rules and are appointed by the Law Department in consultation with the Director, the Sessions Judge and the District Magistrate.
- b. The Director is responsible for reviewing the work of these Law Officers and reporting the same to the Law Department under Rule 6.

#### 5.6.5. Special Counsels

Special Counsels are appointed under Rule 30 of the KLO Rules by the Government, after consulting the Advocate General or Director of Prosecution, for the conduct of civil or criminal cases or any connected proceedings, pending in any court.

### **5.7. Offices of Administrative Officers**

- 5.7.1. The Offices of Administrative Officers, headed by the Administrative Officers (Stakeholder Representatives), are integral Stakeholders who ensure the smooth functioning of the system. They play an important role in enhancing the efficiency of the system.

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- 5.7.2. The Office of the of Administrative Officer connected to the Office of the Advocate General has 1 Administrative Officer, 5 Assistant Administrative Officers and 12 Section Officers. The Administrative Officer comes under the direct supervision of the Advocate General.
- 5.7.3. The Directorate of Prosecutions has 11 Administrative Officers to oversee the administration functioning of the Directorate.

### **Chapter III**

#### **PERFORMANCE EVALUATION**

1. Without doubt, the performance of individual actors impacts the performance of the Stakeholder of which they are a part. Correspondingly, the performance of every Stakeholder contributes to the overall performance of the system. Stakeholder Representatives are responsible to evaluate and enhance the performance of their individual actors, just as the State is responsible to increase the collective efficiency of the Stakeholders.
2. Adopting a top-down approach, the Policy recommends two key measures to evaluate and improve performance with respect to disputes involving the State and:
  - i. Constitution of an Empowered Committee to monitor the implementation of the Policy.
  - ii. Performance evaluation by Stakeholders internally.

#### **3. Constitution of an Empowered Committee**

- 3.1. In order to monitor implementation and foster accountability, the State will constitute an Empowered Committee headed by the Chief Secretary, and shall include the Law Secretary, Advocate General and such other persons as the Committee may decide. There shall be a quorum of 50% of the Committee and shall mandatorily require the presence of either the Law Secretary or the Advocate General, at its meetings.

##### 3.2. The Empowered Committee shall:

- a. Monitor the implementation of this Policy.
- b. Examine the measures taken by the Stakeholders to achieve the objectives of this Policy (in addition to implementing the measures prescribed herein).
- c. Review the budget allocated and spent on disputes by the Stakeholders.
- d. Recommend tailored measures to the Stakeholders that are evolved in consultation with them.
- e. Organize conferences and conduct trainings to inform and educate the Stakeholders about implementing the Policy.
- f. Build awareness and ensure wide circulation and publication of the Policy.
- g. Periodically review the Policy.

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#### 4. Internal Performance Evaluation by Stakeholders

- 4.1. Each Stakeholder must strive to adopt and implement the Policy, assess self-performance, and initiate self-reform measures to bring about change. Change that results from self-assessment will be resolute, long-lasting and contribute to systemic excellence. For the assessment to be meaningful, it must be carried out against well-defined parameters that can be monitored and measured. These parameters or performance indicators are tools of evaluation to achieve the goals of this Policy.
- 4.2. Establishing performance indicators achieves two objectives: *First*, it sets the standards that guide individual actors in their operations and functioning, thereby bringing focus and clarity to actions and decisions. It will enhance the actors' understanding of the important role played by them within the system. *Second*, assessing and measuring performance can propel self-regulation, bring about change in the behavior of individual actors and influence decisions. A systematic and scientific process of defining the parameters of performance and evaluating it is key to evolving strategies for progress.
- 4.3. Performance indicators should be established in a way that the mission of this Policy is translated into tangible targets. The performance indicators must be comprehensive, specific, measurable and include both qualitative and quantitative aspects of *Efficiency, Responsibility and Accountability* in the *prevention, management and resolution* of disputes involving the State.
- 4.4. The responsibility to establish performance indicators and develop measurement systems that are aligned with the objectives of this Policy is on the Stakeholder Representatives. It is for the Stakeholder Representatives to customize and evolve performance indicators that are specific and relevant to the individual actors. This task of evolving performance indicators must be done by the Stakeholder Representatives in consultation with the individual actors, whose experience and insights will be valuable to the process. Involving the individual actors in the process of formulation of the performance indicators will also enhance their commitment to the Policy objectives and gain their consensus in the adoption of these parameters in day-to-day operations.

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- 4.5. The performance indicators must be clearly defined and set out in manuals that are drafted and circulated by the Stakeholder Representatives. The manuals must explain the “measurement system” – what are the components of every performance indicator; how is each metric calculated; what is the data to be tracked and recorded by every Stakeholder; how, when and where will the data be analyzed / reviewed; what is the rationale behind every performance indicator and its relation to the Policy objectives. These manuals will serve as practical guides that will describe key performance areas to strive for excellence and elucidate concepts and tools that will be assessed to improve the domain of disputes involving the State.
- 4.6. Stakeholders will assess performance under two broad categories: (i) Budget and Spending (ii) Operations. A description of each of these categories is given below, on the basis of which indicators shall be developed by the Stakeholder Representatives. The discussion here is by no means exhaustive and the Stakeholder Representatives are encouraged to exercise their autonomy and insight into their internal workings in evolving accurate indicators. The discussion here is limited to the management of legal issues and conduct of disputes only. Based on the concepts and principles of the Policy, Stakeholder Representatives shall establish customized performance indicators and develop comprehensive measurement systems.

#### **4.7. Budget and Spending on disputes / legal issues**

- 4.7.1. Budget & Spending on disputes is relevant to evaluate the performance of Stakeholders who are party to disputes and have autonomy in decision-making with respect to finances. It is thus relevant to the Departments of State, and can also guide statutory bodies and PSUs.
- 4.7.2. The need and responsibility of Stakeholder Representatives to meticulously plan and allocate a budget for the conduct of disputes in their wing cannot be emphasized more. While it is true that legal costs are contingent upon the occurrence of disputes, the magnitude and impact of the contingency for the State is so humungous that it cannot be left unplanned. The allocation of financial resources for legal costs should be done strategically and systematically.

- 4.7.3. The task of preparing a budget for legal costs must be preceded by two exercises.

*First*, the legal spend over the past years must be tracked. The past data is a good indicator of how much resources are likely to be required under normal circumstances in the foreseeable future. In addition to this, Stakeholder Representatives must make anticipatory allocations, keeping in mind any special circumstances that they are faced with in the present, which may result in potential disputes: changes in law, disagreements with opponents on commercial matters, etc. If the anticipated disputes do not arise, the allocated amounts must be used to create reserves for future legal matters.

*Second*, a database of cases categorized after analyzing risk on the basis of likelihood of adverse outcome and impact, must be studied. In order to effectively conduct disputes, the resources allocated to high impact cases ought not to be the same as those allocated to routine cases. And if a significant amount of money is being spent on routine cases, there has to be an introspection on causation: what are the inefficiencies that are leading to filing of such routine cases and how can such inefficiencies be cured.

- 4.7.4. Once a budget has been allocated, the focus ought to be on effective utilization and spending.

Spending too much when the stakes are not high and spending too little on high impact cases are both examples of irrational decision-making. High impact cases and cases where the probability of negative outcome is high should be dedicated a larger proportion of resources. These are cases where Special Counsels may be appointed if required. Low impact cases may be allocated least resources, irrespective of whether the likelihood of an adverse outcome is high or low. It must be borne in mind that a very high volume of low impact cases is very problematic for a Department as they have the potential of draining the State's resources. Such a situation points to the need for immediate short-term and long-term strategies. High impact and low chances of victory cases will require some attention as they offer maximum opportunity for creative problem-solving and allow for adoption of alternative dispute resolution mechanisms.

- 4.7.5. An extension of the Budget & Spending Indicator is the efficient clearance of pending payments to Law Officers. If the legal spend has been provided for in the budget, then the delays in releasing the payments will not be due to non-

availability of funds but only due to operational issues, which is dealt with under the parameter of operational metrics.

#### **4.8.Operations**

- 4.8.1. The metrics of Budget & Spending are strategy-oriented which are beneficial to evaluate performance over a period of time. However, operational metrics which relate to operational efficiency must be assessed in short periods of time, as and when the operations take place. The reasons for evaluating performance through operational metrics are to ensure that the individual actors discharge their duties efficiently and to enhance the quality of processes to aid the actors' performance. Operational metrics are relevant to all Stakeholders and will inform the individual actors of the manner (and time) in which everyday functions are performed and issues / obstacles are handled. It would be remiss on the part of the Stakeholder Representatives to not collect and analyze these metrics so that immediate corrective measures can be initiated. Often, ordinary functional issues snowball into larger issues resulting in disputes that could have been easily prevented.
- 4.8.2. Some components of operations that will impact performance include:
- a. Onboarding: Stakeholders must ensure that newly appointed individual actors have a formal induction and mentoring system that imparts knowledge not only about core functions but also regarding the laws and rules that govern them, along with this Policy. Consistency and quality of these onboardings is a metric to evaluate the Stakeholder's performance.
  - b. Workload distribution: Stakeholders should effectively measure and distribute workload among the individual actors by tracking the functions performed by them with attention to volume, intensity and complexity.
  - c. Timelines: Responsiveness in performing core functions expeditiously and diligently must and should be prioritized.
  - d. Compliance with applicable laws: A large number of cases are filed against the State wherein directions are sought from the courts in respect of performance of statutory duties and for implementation of legislations. These cases can

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easily be prevented by ensuring that individual actors discharge their duties diligently.

- e. Payment of professional fees: State Departments, are service recipients; they ought to ensure timely payment of professional fees to the Law Officers. Non-payments and delays in making payments disincentivizes promptitude in delivery of services.
  - f. Proactivity in setting up and using technology: Stakeholders should take initiative to create technological systems to solve hurdles and simplify processes in order to enhance performance.
  - g. Alternative Dispute Resolution: Stakeholders should evolve and adopt tailored mechanisms that are appropriate and effective to the kind of disputes faced by them.
  - h. Execution of commercial contracts: Departments should seek quality legal advice before entering into commercial contracts. Thought-out and well drafted contracts are an effective measure in preventing future disputes.
  - i. Trainings: Stakeholders should dedicate time and resources and encourage individual actors to participate in training and development activities that will enhance the quality of the overall system.
  - j. Compliance and Enforcement mechanisms: It is imperative for the Stakeholder Representatives to conduct periodic reviews and assess performance of the individual actors. Periodic reviews are an effective compliance mechanism together with incentivizing and rewarding good performance and imposing penalties in case of significant violations (within the limits of the law).
5. *To measure is to know; if you can't measure it, you cannot improve it.*<sup>7</sup> By setting up the Empowered Committee to evaluate Stakeholders' performance and by incorporating practices to evaluate the performance of individual actors within every Stakeholder, it is hoped that we can achieve progress in the domain of disputes involving the State.

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<sup>7</sup> Quote by William Thomson (Lord Kelvin).

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**Chapter IV**  
**ESTABLISHING DATA MANAGEMENT SYSTEMS**

1. In performing their functions, all Stakeholders maintain and share information/data. Such data may be of different types. Data may be case specific, thereby including case files, briefing documents, correspondence between stakeholders, records etc. Data also may be Stakeholder-specific. For instance, it may include information on the number and nature of cases pending before each department, number of cases managed by each law officer, number of pending and disposed cases etc. Further, data may also be function-specific. For instance, it may include information about the status of the case, case/file progress, work allocation etc. Therefore, ‘data’ is an overarching term used to indicate all information that is generated, used and shared by Stakeholders.
2. In case of government disputes, data management demands a capacity to manage large-scale and variety of information through multiple Stakeholders. Today, most Stakeholders manage data in an ad hoc fashion. There are no efforts to systematically collect, catalog and manage data either by State Departments, or by Law Officers. This creates barriers to access, reliability and use of the data. Systematic data collection and management is necessary to overcome these barriers. Suitable data management systems assist in evaluating performance based on empirical information, improving efficiency of the system, and ensuring government compliance with accountability standards vis-à-vis access and disclosure of data.
3. Stakeholder Representatives are responsible for creating the architecture of the data management systems by evolving suitable strategies, practices and protocols. Such a system will systematize the entire data management process. No doubt, individual actors (such as, Law Officers, Public Information Officers, Department Officials etc.) have varied responsibilities towards data management and information sharing in government disputes. Evidently, each individual actor shall be responsible for the implementation of its functions under the data management system. However, Stakeholder Representatives must also consider and clarify the function of each individual actor within its jurisdiction towards data management; and enhance the capabilities of such individual actors to implement their functions.

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4. Each Stakeholder Representative shall create data management strategies (that could be styled as strategy documents, protocols, best practices etc.,) that identify best practices and lays out protocols and obligation of individual actors. This policy has five main recommendations for necessary components of a data management strategy. First, the strategy must systematize data collection, record keeping and organization. Second, the strategy must standardize information exchange between various Stakeholders. Third, the strategy must set standards for access and disclosure. Fourth, the strategy must foresee and provide for necessary training of its individual actors, to implement the data management system. Fifth, the data must be analyzed to evaluate and enhance performance and review functioning of individual actors and Stakeholders.

## 5. **Data Collection and Organization**

5.1. It is important that Stakeholder Representatives systematize the manner of collecting and organizing data. In formulating a strategy on data collection and organization, each Stakeholder Representative shall consider and include the following components:

5.1.1. **Data Inventory and Collection:** Each Stakeholder Representative shall undertake a data inventory process to determine the type and scope of data within its Department and the individual actors responsible for collecting it. Each Stakeholder Representative is independently responsible and accountable for ensuring the availability, access and reliability of information concerning its jurisdiction. While the same information may be shared or generated by other Stakeholders, it remains the responsibility of each Stakeholder Representative to generate and manage data pertaining to its Department/office.

5.1.2. **Cataloguing, Indexing and Labelling:** The Data Management Strategy must contain best practices to catalog, index and label the data, to make it more easily comprehensible and accessible. Officers responsible for documentation and record keeping must be aware of and use the catalog, index and labeling system.

5.1.3. **Consistency and Reporting:** Data collection and organization must be a consistent and continuous process. The strategy must set parameters to fulfill the objectives of the Policy—*to prevent, manage and resolve disputes*. The strategy shall also set the frequency of reporting, to ensure diligent collection and organization.

5.1.4. Accuracy, Reliability and Quality: The strategy must set verification standards to ensure that the collected data is accurate and reliable. Further, processes should be established to control the lifecycle of data – from the time of generation to the time of its disposal.

## 6. **Information Exchange**

6.1. An efficient data management system must also standardize the manner of exchanging information between Stakeholders. Since inter-actor coordination is one of the biggest concerns in government disputes, standardizing information exchange is useful towards easing coordination. The data management strategy must consider the following components when addressing information exchange:

6.1.1. Alignment with Existing Exchange Policies: There are existing rules (formulated under statutes) applicable to Stakeholder Representatives and individual actors that determine their role and how they coordinate with others. The data management strategy must align information exchange strategy with the existing Policy and role of each individual actor.

6.1.2. Use of Risk Management System: Risk management systems are useful in prioritizing and determining workflow. The strategy must also consider how the risk management system can be used to guide workflow and information exchange.

6.1.3. Identification and Documentation of Information Exchange: It is useful to form basic best practice documents to establish an information exchange system amongst individual actors, especially where existing rules are not adequate. Further, there must be a record of the status of the information exchanged. For instance, the record must indicate who is in possession of a certain file and which individual actors have worked on it.

## 7. **Information Access and Disclosure**

7.1. The data management strategy must set standards determining who and how information is accessed and disclosed. The following components are necessary considerations while formulating information access and disclosure strategy:

- 7.1.1. Ease of Access: The strategy must ensure that information (particularly critical information) is easily available to relevant individual actors, without a complicated bureaucratic process. To do this, it must also consider the use of technology to streamline processes and integrate information.
- 7.1.2. Credential and Authorization: The strategy must also incorporate a credential management and authorization process, through which it ensures that only those authorized to access the relevant information are able to access it.
- 7.1.3. Disclosure, Privacy and Security: The strategy must provide guidance on identifying information that may be disclosed by law and information that is privileged and confidential. These disclosure standards must guide the data management system. In setting these standards, the privacy concerns of relevant parties, and the security of information and the system must be considered and protected.

## 8. **Training and Enhancing Capabilities of Individual Actors**

Since individual actors are also responsible for operating and implementing the data management system, the strategy must aim at adequate training to individual actors to increase their familiarity with the system and their functions. Further, Stakeholder Representatives must also supply the necessary infrastructural facilities to ensure that individual actors are capable of performing their functions. In doing so, Stakeholder Representatives must consider the workload of each individual actor and ensure that no unrealistic workload burdens are placed on individual actors.

## 9. **Data Analysis for Performance Evaluation and Review**

- 9.1. The data collected should be analyzed and interpreted systematically and scientifically by every Stakeholder. Stakeholder Representatives and Individual Actors can beneficially employ data analysis to evaluate performance and review their functioning. For instance, if a Department is pursuing several cases against its own employees, on analysis, the cause could point to a deficit in leadership and also provide ADR opportunities. If a Department is subject to continual writs of mandamus to consider representations, analysis may reveal that the Department officials are being negligent in performing their duties towards citizens. The Department could then prioritize remedial measures to ensure that statutory duties are performed diligently and expeditiously.

Multiple contempt petitions may point to indifference and dereliction of duty warranting an internal enquiry against the official responsible.

- 9.2. For a Law Officer, it would be relevant to track the number and details of pending cases being handled individually, number of pleadings drafted and filed in a defined time period, number of effective and non-effective appearance, adjournments, case disposals etc. in a defined time period. Analysis of the data may reveal that adjournments are sought due to workload imbalance or due to inadequate assistance from the Department etc. Identifying causes based on data is beneficial in evolving measures to rectify problems. Such analysis and performance evaluation are what makes data useful. Data is therefore also instrumental in justifying budget plans and allocation, work allocation and workflow management.
10. This Policy is clear in its emphasis on the importance of data management and establishing efficient systems in that regard. To achieve efficiency, accountability, and responsibility standards with data management, use of technology is integral and highly beneficial. The following chapter discusses how technology can be employed for data and workflow management.

## CHAPTER V

### USE OF TECHNOLOGY

#### 1. Need for Use of Technology

- 1.1. This Policy, in the preceding chapters, has emphasized the importance of data management and workflow management. This chapter advocates the use of technology to manage data and workflow. It is common practice for each Stakeholder to store information in silos and access it in an ad hoc manner. This creates delays, particularly when coupled with lack of coordination amongst Stakeholders in seeking or furnishing information for each dispute. Therefore, there is a need to form integrated, centralized and easily accessible information sharing and data management systems to avoid such obstacles. It is also important to create faster and simplified processes for daily functioning of Stakeholders. Use of technology for building such a system is key to implementing efficient data management and communication systems.

- 1.2. Consultations with Stakeholders revealed that there is no systematic use of technology, either for data management or for workflow management in government disputes. There is an absence of an integrated and centralized database, platform or interface that Stakeholders can use for case management or to track case progress internally. Further, movement of files, approvals, reporting and formal communication between Stakeholders is still in paper form and subject to duplication. Additionally, due to insufficient tagging and indexing of available data, Stakeholders are also unable to benefit from such data to prepare statistics or assess performance. Any use of technology by Stakeholders is only incidental. Therefore, in conducting government litigation, significant measures are necessary to plan and build efficient technological infrastructure that provides a solid framework for the use of technology by Stakeholders.
  
- 1.3. This Policy makes the following recommendations regarding use of technology by Stakeholders:
  - 1.3.1. There shall be an autonomous body established called “Karnataka Government Dispute Management IT Cell” (IT Cell), with the key responsibility of evolving optimum and efficient technological systems and solutions to government’s dispute management.
  
  - 1.3.2. Notwithstanding the functioning of the IT Cell, it shall remain the responsibility of the Stakeholder Representatives to ensure that there is suitable technological infrastructure functioning within its Department/office.
  
  - 1.3.3. Stakeholder Representatives must move beyond mere digitization goals, to aim at creating the technological infrastructure to support data and workflow management. This provides the solid supportive environment to provide efficient technology-based solutions.
  
  - 1.3.4. In designing the technological infrastructure, the IT Cell or the Stakeholder Representative, as the case may be, shall follow the policy recommendations herein concerning (i) Design Factors (ii) Data Management (iii) Workflow Management.

## 2. Building Technological Infrastructure

- 2.1. Before undertaking a technological initiative, it is important to understand the meaning and need for technological infrastructure. Technological infrastructure refers to any foundation, framework, or system with hardware, software, networks, and any other component., that supports management of data and ease of communication. Historically, the approach of technological initiatives in government management was restricted to digitizing available information, i.e. converting paper files to electronic form. To be sure, digitization is important and provides benefits in ease of access. However, it is not adequate. Technology-based platforms are only efficient and useful when (i) there exists an infrastructure (hardware, software, network capabilities etc.) to support a given technology, (ii) the development and implementation is planned and designed; (iii) the intended users are familiar and benefitted from the use of the technology. Given this, building technological infrastructure must adopt a wider approach and focus on redesigning the technological environment and increasing capabilities of its users, rather than adopt a narrow approach of mere digitization.
- 2.2. Stakeholders in a dispute system will greatly benefit from systematically adopting technology not only in storing, managing and using information (i.e. record keeping/data management), but also in conducting the dispute resolution processes (procedural/process efficiency). Technology saves significant time and effort of its users and minimizes manual tasks. Planned employment of technology leads to enhanced efficiency in the functioning of the dispute system, increased capabilities of its stakeholders to manage disputes and evaluate performance, and increased access to information, allowing for better compliance of transparency and accountability standards.

## 3. Layout of Existing Technology Driven Initiatives Across Stakeholders

- 3.1. There are technological initiatives driven by several Stakeholders on various aspects that intersect with government disputes. While these technologies must be referred to in evolving the design for government disputes, efforts must be made to ensure that they are not blindly adopted. The following table provides an overview of the existing systems.

<b>➤ Ministry of Law &amp; Justice (Department of Legal Affair)</b>		
1.	Legal Information Management & Briefing System (LIMBS)	LIMBS consolidates information on cases where Central Ministries/Departments are parties to a legal dispute.
2.	Integrated Case Management Information System (ICMIS)	A digital repository of the cases pending before the Supreme Court.
<b>➤ Ministry of Law &amp; Justice (Department of Justice)</b>		
3.	Case Information System (CIS)	This provides details of case proceedings pending before various District Courts.
4.	National Judicial Data Grid (NJDG)	A repository of information on status of cases before various courts.
5.	High Court Litigant Management Information System (HLMS)	A system to maintain electronic data and to manage the activities of the cases before the High Courts.
<b>➤ Department of Consumer Affairs</b>		
6.	CONFONET (Computerization and Computer Networking of Consumer Forums)	Introduced to enhance efficiency and expeditious disposal of pending cases before consumer forums.
<b>➤ Department of Prisons</b>		
7.	E-Prison	Introduced for integration of the activities of the prison management.
<b>➤ Karnataka State Police Department</b>		
8.	Police IT	Introduced to monitor and act as a tool for effective running of the main functions of crime, law and order, traffic, finance, administration, training etc.
<b>➤ Ministry of Home Affairs</b>		
9.	Crime and Criminal Tracking Network & Systems (CCTNS)	Monitors functioning of police departments at various levels and provides access to the information of the cases pending concerning various police departments.
<b>➤ Karnataka Revenue Department</b>		
10.	Bhoomi Project	Aims at computerization of the land records to maintain and manage by automation of processes.

11.	Revenue Court Case Monitoring System (RCCMS)	Provides details of cases filed before Revenue/Magisterial courts.
<b>➤ Department of Personnel and Administrative Reforms</b>		
12.	E-Office	Performs internal official functions online.
13.	E-Sign	Aims to provide digital signature services to all departments in Karnataka.
14.	E-Procurement	Program to create unified e-storage.
15.	HRMS: Human Resources Management System	Introduced to manage service record and payroll of government employees.
16.	Sachivalaya Vahini	To provide access to government orders, decisions, notifications, and other files to the public.
<b>➤ Department of Urban Development</b>		
18.	E-Aasthi	Maintains and manages the records of the properties in urban local bodies.
<b>➤ Rural Development &amp; Panchayat Raj</b>		
19.	E-Swathu	Maintains and manages the records of the properties in rural villages of Karnataka.

#### 4. Responsibility for Building Technological Infrastructure

- 4.1. There shall be an autonomous body, called “Karnataka Government Dispute Management IT Cell” (“IT Cell”), with the key responsibility of evolving optimum and efficient technological systems and solutions to government’s dispute management. The main functions of the IT Cell shall include, among others, the following:
- a. Designing, developing and maintaining suitable, efficient and updated technological infrastructure for government disputes. In doing so, the IT Cell shall consider and align its functioning with this Policy.
  - b. Holding consultations with all Stakeholders to obtain information and make evidence-based assessment of prevalent practices and to identify key areas for technological intervention.
  - c. Reviewing existing technological infrastructure used by Stakeholders and taking measures to integrate data across multiple platforms.
  - d. Creating comprehensive database on government dispute management, with information of all government disputes before multiple forums, and of all relevant Stakeholders and individual actors etc.

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- e. Collaborating and consulting with other authorities such as the Centre for E-governance etc., in data management and communication.
  - f. Evolving and defining standard practices, frameworks, and templates for using technology in a systematic manner and assisting each Stakeholder in adopting such practices, frameworks and templates for its own functioning.
  - g. Conducting training/workshops or other programs to ensure that Stakeholder Representatives and individual actors, are familiar with the technology and are capable of using it in a systematic manner.
  - h. Ensuring that the technological infrastructure continues to conform and comply with prevalent privacy and security law, standard and protocol.
  - i. Complying with all other standards, requirements and measures as specified in this Policy and as prescribed by the State Government from time to time
- 4.2. State Government may by law/rules, prescribe the constitution of the IT Cell, eligibility and qualification standards of its members, the manner of their appointment and the term of office.
- 4.3. Each Stakeholder Representative shall ensure that it actively assists the IT Cell in evolving efficient designs, by providing feedback and information as required. The formation of the IT Cell does not absolve the responsibility of each Stakeholder Representative to ensure that suitable IT infrastructure with platforms, standards and protocols are in place; and that the end-users are familiar and capable of using the available technology.

## **5. Designing Technological Infrastructure: Guiding Principles and Implementation Considerations**

- 5.1. Each Stakeholder Representative, or the IT Cell, as the case may be, in the discharge of their functions, shall follow and incorporate the guiding principles, factors and the implementation considerations as outlined in this part. This section makes recommendations on three key components: First, on the necessary design factors to be considered in planning a technological initiative; Second, on the data management using technology; Third, on workflow management using technology. These components are discussed below:

### ***5.2. Design Factors***

- 5.2.1. Plan Beyond Digitization and Determine Sophistication of Technology:*** In designing technological initiatives, the aim must move beyond mere digitization, towards enabling a technological environment that supports data and workflow management and increases capabilities. In doing so, it is important to determine the level of sophistication of technology required to make the infrastructure useful and optimal.
- 5.2.2. Updating and Review:*** Outdated technology is an obstacle to usability. Therefore, Stakeholder Representatives must ensure that their office/Department is equipped with updated hardware, network installations (LAN, Wi-Fi etc.), and software capabilities; and that periodic reviews to ensure updates and relevance.
- 5.2.3. Design and Implementation through Protocols, Standards and Models:*** It is not adequate to employ technology at isolated intervals in an ad hoc manner. Protocols ensure the workability and a planned flow to use of technology. Standard setting ensures that the infrastructure conforms to current standards and stays relevant and usable. Models and frameworks lay out the structure for implementation of technology. Design and implementation must be planned suitably through protocols, standards and models.
- 5.2.4. User Centric and Accessible:*** Technological initiatives must be aware of its end user and must strive to make the infrastructure accessible and usable by the intended end-user. Further, accessibility standards must be updated to ensure that persons with disabilities are also equally capable of accessing the technological infrastructure.
- 5.2.5. Increasing Capabilities:*** For any technology to be effective, it needs to ultimately lead to increasing the capabilities of its users. Stakeholders and individual actors must be trained and capable of using technology.
- 5.2.6. Promote Automation and Smart Learning:*** One of the biggest benefits of technology is its scope to increase automation of tasks and reduce manual updating of routine tasks. While designing technological infrastructure, priority must be assigned to automation of routine tasks.

- 5.2.7. Security, Privacy and Data Protection: Any authority in charge of data management or building technological infrastructure for government disputes must comply with current and updated security, privacy and data protection laws and standards.
- 5.2.8. Data from other technological infrastructure: In creating infrastructure for government disputes, existing dispute management systems must be referred to and where useful, data must be integrated. However, while doing so, efforts must also be made to avoid blindly adopting outdated or defective data or systems.
- 5.2.9. Online Dispute Resolution: In building technological infrastructure for government disputes, serious commitment and consideration must be given to Online Dispute Resolution (ODR) and building the suitable technological framework required to adopt ODR.
- 5.2.10. Budgetary and Policy Commitment: It is necessary to plan budget allocation and spending to ensure that there are no financial constraints in implementing the design. As a matter of policy, it is necessary to promote technology-based initiatives and encourage innovation in creative and efficient models.

### *5.3. Data Management: Guiding Principles and Factors*

- 5.3.1. Comprehensive Data Coverage: Chapter IV has outlined the necessity, importance and benefit of efficient data management systems. Where technology is employed to manage data, databases must strive for comprehensive data coverage, including information of all cases/disputes of the government before various forums, information on all key Stakeholders, Stakeholder Representatives and individual actors.
- 5.3.2. Integration, Centralization and Symmetry of Information: Technology provides opportunities to create shared databases and thus avoid storage in silos and asymmetry of information. Therefore, it is important to establish a data management system that focuses on information centralization, integration, and symmetry. Integration and symmetry of information can be achieved through certain measures such as, developing standard interfaces for easy information exchange, having common case classification, and indexing systems etc.

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- 5.3.3. Management of Access to Information and Authorisation through Credential Management and User Privileges: Chapter IV on Data Management emphasized the importance of regulating access through authorization and credential management. The IT Cell or the Stakeholder Representative, as the case may be, while in charge of data management, shall consult with the necessary Stakeholders to determine open access information and restricted access information; and thereafter shall plan and define authorization and authentication processes to regulate access to these categories of information.
- 5.3.4. Indexing, Tagging and Searchability: It must be ensured that available data is indexed, tagged and searchable. Data management processes must set up protocols and standards for indexing and tagging, in consultation with stakeholders. Further search optimization must be considered key to usability of data.

#### **5.4. Workflow Management: Guiding Principles and Factors**

- 5.4.1. Automation and Ease of Operation: Technology must be used to assist in tracking the progress of each dispute. Automatic tracking of case progress and file movements; setting timelines; generating case status reports all go a long way in enabling ease of operations.
- 5.4.2. Ease of Communication and Collaboration: To overcome coordination obstacles, technological initiatives must establish communication and collaboration platforms. Use of shared drives for file management, digital signatures etc., must be explored to ease formal communication and approvals. Further, standard templates and forms may be uploaded for quick drafting and form-filling.
- 5.4.3. Training and Awareness: For any technological initiative to be successful, it needs to be actively used by its intended end-users. It is necessary to invest into creating awareness of the available technology and training end-users to be familiar with using technology for their functioning.
6. Ultimately the goal of adopting technology is to increase efficiency of the system and enhance capabilities of its end-users. The above recommendations are illustrative and provide starting points. The IT Cell and Stakeholder Representatives must ensure that the technological designs address specific requirements and nature of disputes and continue to be relevant and used.

## Chapter VI

### IMPROVING CONDUCT OF DISPUTES IN STATE DEPARTMENTS

1. The conduct of disputes pertaining to the State involves the coordinated functioning of several individual actors. On one hand, the individual actors belong to the Department of the State where the dispute originates and on the other hand, it involves the individual actors / Law Officers who represent the State in courts. As a dynamic system of large magnitude, its complexity is an anticipated fact. The functioning of such a system is impacted not only by actions of the individual actors but also by the quality of interactions between them.
2. The first part of this Chapter describes the existing structure of functions and the later parts recommend several reforms. Some of the reforms are structural and process-related, whereas some others relate to the quality of representation of the State by the Law Officers.

### 3. Structure and Functions

- 3.1 In order to bridge the gap between the State and the Law Officers and to coordinate the conduct of disputes, Legal Cells were established in the Karnataka Government Secretariat in accordance with Government Order No. DPAR 425 SGO 95 dated 01.01.1996 (hereafter “GO dated 01.01.1996”). The Legal Cells headed by Heads of Legal Cells (hereafter “HLCs”) are an integral part of every Department in the conduct of disputes. The Conduct of Litigation Rules, 1985 (hereafter “CLR Rules”) aim to describe the processes to be followed in the conduct of disputes and set out the workflow management. The processes pertain to the responsibilities to be discharged by the Legal Cells / HLCs, appointment and role of Litigation Conducting Officers (hereafter “LCOs”), issuance of orders appointing Law Officers and such other matters.
- 3.2 As per GO dated 01.01.1996, every Legal Cell shall be headed by an HLC. In Departments where the number of cases exceed 2000, the HLC shall be from the judicial services of the level of Civil Judge (Senior Division). In other Departments, the Legal Cell may be headed by a Senior Munsiff / Civil Judge (Junior Division) with a minimum of 5 years’ experience in the cadre. In case of insufficiency of serving judicial officers, the Government may appoint retired judicial officers to head the Legal Cells on a contract basis. The HLC shall be assisted by a Desk Officer, 2

stenographers, 1 junior assistant and 2 dalayats. Section Officers from the staff of the High Court or Advocate General’s Office or the Karnataka Government Secretariat service are to be deputed as Desk Officers.

- 3.3 Annexure I to the GO dated 01.01.1996 lists 17 Departments that shall have Legal Cells. Annexure II lists the duties and responsibilities of the Legal Cells, in addition to those assigned under the CLR Rules.
- 3.4 There are two major aspects of functions to be performed by the Legal Cells / HLCs: administrative functions and substantive functions. The administrative functions include tasks such as issuance of Government Orders appointing the Law Officers and LCOs, request the Law Department or the Office of the Advocate General to render opinions on complex matters, sanction the invoices raised by Law Officers and secure copies of judgments from the Law Officers and forward the same to the Law Department along with their recommendation on filing of appeals or otherwise. Some of the substantive functions of Legal Cells / HLCs include: examining the legality of claims, studying the evidence available and taking decisions in matters of initiating proceedings on behalf of the State; in case of receipt of notices under Section 80 of the Code of Civil Procedure, 1908, the advice of the Legal Cell is required to be obtained and the Legal Cell ought not endorse defending a claim without examining the claim in detail; if counter affidavits are prepared by Law Officers to be filed in writ petitions, the Legal Cells should scrutinize and modify the same, without treating such scrutiny as a routine matter.

## **Measures for Reform**

### **4. Process – Oriented and Structural Reforms to the Conduct of Disputes**

Often, individual actors emphasize on “procedural” aspects in the conduct of disputes rather than the “substantive”. The focus is on movement of files from one official to the next in the hierarchy, instead of ensuring value addition to the file at every step of the process. In order to address this issue, the Policy prescribes three key steps that must become part of the process of conduct of litigation: Risk Analysis, Workflow Management and Devising Dispute Strategies. These steps are to be implemented by the Heads of Departments in consultation with the Law Officers.

#### 4.1.Risk analysis

- 4.1.1. Just as companies / businesses make decisions on whether it makes economic sense to litigate or to settle a case, Departments must make these decisions for every case. Values should be assigned to probabilities and the likelihood of adverse outcomes if adversarial methods of dispute resolution such as litigation or arbitration are pursued, must be evaluated. As a process, risk analysis must include two aspects: (i) gauging the likelihood of adverse outcomes; (ii) factoring the impact caused on the respective Department, the State and on society as a whole.
- 4.1.2. It is not that risk analysis is a new concept, it may be found in several existing rules: evidence is required to be evaluated by HLCs /Legal cells before initiating claims, opinions are sought from the Law Department or from the Advocate General's Office in various situations and HLCs are to examine the merits of the case before filing appeals., It is essential is that in the process of routinely following rules, the object and purpose of the rules are not missed. Thus, there is a need to consciously focus on analyzing risk by taking into account various factors.
- 4.1.3. Factors that could aid the process of risk analysis include:
  - a. Strength of evidence
  - b. Time that may be taken at the stage of original proceedings and subsequently in appeals
  - c. Background check on opponents: their resources, circumstances and other contributory factors that may hinder dispute resolution including their propensity to file appeals
  - d. Probability of opponents pursuing appeals
  - e. Assessment of legal trends by reading precedents
  - f. Value of the claim being raised or defended which will have a bearing on impact caused to the Department
  - g. Perceptual impact on society

#### 4.2.Workflow Management

Effective risk analysis will help formulate appropriate responses, reduce uncertainties and adopt corrective or damage-control measures. Importantly, it will guide workflow management by providing an understanding of prioritization of problems and allocation

of human and financial resources. Given that resources are scant, and volume of disputes is very high, enhancing efficiency by an optimal workflow management is crucial.

#### **4.3. Devising dispute strategies**

- 4.3.1. Once the risk analysis is complete and the reasons on which the analysis is based are clear, it is essential to evolve sound strategies before proceeding with the next steps in the dispute. These strategies will determine the tool or combination of tools that will best serve in resolution of the dispute and also include contingency plans. Strategies could relate to the choice of remedy where there are multiple options, choice of dispute resolution mechanism such as mediation, negotiation or litigation, choice of Special Counsel, etc. It is essential that strategies are revisited as the case evolves and the focus at all times remains on the resolution of disputes.
- 4.3.2. The strategies formulated need to have a correlation to the impact of the dispute. From the State's perspective, impact is not only measured in financial terms to the Department / State but also in terms of public perception and serving public interest. The practice of filing appeals all the way to the Supreme Court merely to obtain a certificate of dismissal so that quietus can be put in the Department has been repeatedly frowned upon by the Apex Court including in its recent judgment.<sup>8</sup> Even in cases where the likelihood of the Department succeeding in Court is high, it is necessary to evaluate if the value addition of such victory is of worth to the Department and would justify the expending of public resources.

### **5. Nodal Officers**

- 5.1. Each Department shall appoint a Nodal Officer to coordinate with the Law Officers and also assist the Heads of Departments in legal matters. To be eligible for an appointment as Nodal Officer, as a minimum qualification the applicant shall be a qualified Advocate with a minimum of five years' legal practice. Nodal Officers shall contribute to the conduct of disputes by assisting HLCs with legal research and drafting and assist in maintaining the data management systems pertaining to disputes in their Department. Further, as per the recommendations of the Hon'ble High Court of Karnataka in CCC No. 594/2020 (order dated 02.12.2020), the Nodal Officers may monitor, assist and ensure that

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<sup>8</sup> *National Co-operative Development Corporation v. CIT*, judgment dated 11.09.2020 in Civil Appeal Nos. 5105-5107 of 2009, available at [https://main.sci.gov.in/supremecourt/2007/8001/8001\\_2007\\_36\\_1501\\_23901\\_Judgement\\_11-Sep-2020.pdf](https://main.sci.gov.in/supremecourt/2007/8001/8001_2007_36_1501_23901_Judgement_11-Sep-2020.pdf) (last accessed on 13.09.2020).

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the concerned Department complies with and implements the orders of the courts, in a timely manner Nodal Officers shall also ensure that all relevant data pertaining to cases are forwarded from their respective Departments to the Law Officers or the Litigation Conducting Officers efficiently. The Nodal Officers shall also monitor and coordinate the litigation responsibilities of Litigation Conducting Officers.

## **6. Enhancing quality of representation**

Law Officers, act as the face of the government in disputes. Law Officers include, Government Advocates, District Government Pleaders, Public Prosecutors (including Assistant Public Prosecutors) and Assistant Government Pleaders.<sup>9</sup> In all government disputes, Law Officers represent the government. Each Law Officer provides a legal service to the government, directed at effective and strong representation of the government's position and interest in a dispute. It is important to ensure that such service is responsive and meets certain high-quality standards. The recommendations made herein are on the following main aspects:

- a. In appointing Law Officers (where no examination is stipulated by law), the appointing authority is free to choose the method of selecting the best lawyers capable of representing the government. In doing so, the appointing authority shall also endeavour to ensure that such appointment is fair, reasonable, transparent, non-discriminatory and credible, in accordance with the decisions of the Hon'ble Supreme Court on appointment of government advocates.
- b. Appointment of Law Officers must be done through a properly constituted screening process. Examinations must be conducted to determine suitability of Law Officers.
- c. Supervisory Officers/Authorities shall periodically conduct review of the work of the concerned Law Officers under their supervision.
- d. At a functional level, each Law Officer must be updated with legal knowledge and adept at legal strategy to provide high-quality representation to the government before courts and ADR process.

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<sup>9</sup> For the purpose of this Chapter, the definition of "Law Officer" shall be adopted as under Rule 3 of the Karnataka Law Officers (Appointment and Conditions of Service) Rules, 1977: “ “law officer” means an Advocate on Record, [“Associate Advocate”] a Government Advocate, the State Prosecutor, a High Court Government Pleader, a District Government Pleader a Public Prosecutor, a Special Counsel, an Additional District Government Pleader, an Assistant Government Pleader or any other advocate appointed by the Government for the purpose of conducting any civil or criminal case for and on behalf of the State in the High Court or any civil or criminal court in the State.”

## 6.1 Articulation and Understanding of Quality

- 6.1.1. During consultation with Stakeholders and experts, lack of quality of representation, was repeatedly listed as a significant problem of government dispute management. It was pointed out that there is a necessity to improve quality and competence of individuals who represent the government in disputes.
- 6.1.2. In addressing the problem, it is first necessary to develop an understanding of quality. It is neither helpful, nor accurate to rely on a general definition of quality. However, it is important for Law Officers to have a shared understanding and expectation of the factors and standards that constitute quality of their competence, functions and capabilities. To develop a shared understanding and set standards on quality, stakeholders must rely on performance indicators and performance evaluation criteria. Rather than develop normative standards, Stakeholders must derive best practices and standards from their learnings out of empirical data and understanding of their own functions.

## 6.2 Quality of Appointment, Training and Review of Law Officers

### *Appointment of Law Officers:*

- 6.2.1 It is important for individual officers representing the government to be qualified, competent and capable of providing high-quality legal services. While legislation and rules prescribe the basic eligibility criteria for each of the posts, the process of appointment must also develop standards of measuring quality of candidates.
- 6.2.2 In case of government counsels, the Hon'ble Supreme Court has repeatedly noted the importance of appointing competent and qualified individuals as law officers. In this regard, the appointing authority shall endeavour to conform to the standards set by the Hon'ble Supreme court in *State of U.P v. Johri Mal*,<sup>10</sup> *State of Punjab v. Brijeshwar Singh Chahal*<sup>11</sup> among others. Appointment of Law Officers must be done through a properly constituted screening process. Examinations must be conducted to determine suitability of Law Officers. To this end, the State may aim to bring in suitable amendments to the Karnataka Law Officers (Appointment and Conditions of Service) Rules, 1977.

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<sup>10</sup> (2004) 4 SCC 714

<sup>11</sup> (2016) 6 SCC 1

6.2.3 In addition to these requirements, appointing authorities shall also make all efforts to be mindful of such under-representation of certain disadvantaged sections and ensure that such sections are not ignored during the appointment process due to bias.

6.2.4 Administrative authorities in charge of their respective Law Officers shall also ensure that there is an on-boarding process through which newly appointed Law Officers are familiarized with their functions, duties and routine tasks. Some aspects of such on-boarding process requiring training may be carried out in collaboration with the Karnataka Institute of Law Parliamentary Reforms (KILPAR).

*Training and Knowledge Development*

6.2.5 Even the most competent or efficient Law Officers and Stakeholders require continued learning and training. Given that law and legal practice is continually developing and changing; and new legislations, authorities, tribunals and dispute systems are constantly being introduced, legal training, workshops and continued learning are integral to maintain quality of legal services to the government.

6.2.6 Each Stakeholder requires necessary supportive environment, institutional and infrastructural support to be capable of providing quality legal services. To enhance the capabilities, it must be ensured that Stakeholders, particularly Law Officers, have access to legal material and databases to conduct quality legal research. Necessary infrastructure, such as libraries, updated reporters, online legal research database access, have to be made available to Law Officers.

6.2.7 It shall be ensured that regular programs for continued learning of Stakeholders shall be conducted, with due support and collaboration of KILPAR. Such programs include, but are not limited to, legal training, workshops, courses, seminars etc.

6.2.8 In planning such programs, there shall be a conscious effort to assess the current knowledge and skill levels of Stakeholders and to design the programs to fill the gap in their learning.

6.2.9 KILPAR may also be engaged in conducting onboarding training for newly appointed Law Officers, regarding their specific duties and functions.

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*Review of Law Officers*

6.2.10 To understand the competence, quality and performance of Law Officers, it is important to review their individual functioning and performance. Rule 6 of The Karnataka Law Officers (Appointment and Conditions of Service) Rules, 1977, prescribes yearly review in the following manner:

- (a) *in the case of the Government Advocates, the State Prosecutor and the High Court Government Pleaders, by Advocate General;*
- (b) *in the case of Public Prosecutors, by the Director of Prosecutions; and*
- (c) *in the case of District Government Pleaders, Additional District Government Pleaders and Assistant Government Pleaders, by the Deputy Commissioner in consultation with the District Judge.*

6.2.11 Such review must assess the performance of Law Officers as well as seek their views on their workload and case management. Reviewing authorities shall endeavour to conduct reviews of Law Officers at least once in six months. The Rules do not address the reviewing authority in case of Advocates on Record. It is recommended that a reviewing authority and parameters be set for reviewing AORs as well.

6.2.12 It is important that review processes incorporate performance indicators and performance evaluation data and standards.

6.2.13 The Law Secretary, Department of Law, has a crucial role in ensuring that Law Officers are equipped and perform accountably in representing the government. The Law Secretary may also contribute to assessing the overall performance of Law Officers and scrutinizing their work. The Law Secretary shall also submit monthly reports to the Ministry of Law in this regard. Secretaries of State Departments shall also submit yearly reports on the Law Officers who have handled their cases, and assess their performance. All such assessment by the Law Secretary and the State Department Secretaries shall be seriously considered by the reviewing authorities in reviewing law officers.

### 6.3 Quality of Functions

6.3.1 In performing their functions, Law Officers must ensure that their performance meets standards that promote high-quality representation of the government in

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disputes. To do this, Law Officers must be familiar and updated on the law and aware of every significant governmental action (particularly departmental progress) in the relevant area. The concerned Department, in association with KILPAR, shall ensure that sufficient training and awareness programs cater to equip such officers and increase their capabilities.

6.3.2 Law Officers shall employ the risk management system to systematically identify legal risks under filed cases, assign priority and allocate work based on the assessment of the risk.

6.3.3 Prosecuting Officers, representing the State in criminal matters, must resist unnecessary delays in trial and ensure that speedy and effective justice is available to the victims represented by the State, irrespective of whether the Accused pleads for speedy trial.

6.3.4 In furnishing legal opinions on legal strategy and legal risk analysis to the government, Law Officers shall ensure that such opinions are thoroughly researched and clearly reasoned, and in line with best practices.

6.3.5 Law Officers shall be bound by all functional and ethical rules that apply to their offices and posts and strive to abide by them in letter and spirit.

7. It is hoped that the above reforms will further the Policy's goal of enhancing efficiency in the conduct of disputes. However, it cannot be emphasized more that any reform is only as good as its implementation. It is of utmost importance that the individual actors understand the principles and sincerely incorporate the changes in their functioning in a meaningful manner. The role played by the Law Officers who represent the Departments before the courts is an important aspect in the conduct of litigation. Assuring quality of representation in government disputes has an element of public interest. Law Officers represent the government and its public functions. Therefore, there is responsibility and accountability to ensure quality in representation. Additionally, this Policy has emphasized the importance of assuring quality to enhance efficiency of the system as such. Law Officers who diligently operate risk management systems and actively explore options including ADR, are assisting the Policy objective of efficiency as well.

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## Chapter VII

### ADOPTING ALTERNATIVE DISPUTE RESOLUTION

#### 1. Need for Alternative Dispute Resolution

- 1.1. Alternative Dispute Resolution (ADR) refers to a range of dispute resolution procedures, that are mainly perceived as alternatives to litigation. ADR mechanisms are grouped as such, typically because they are non-judicial and out-of-court methods of resolving disputes. However, a deeper analysis would reveal that ADR is a mere overarching term for a wide variety of mechanisms. The term includes voluntary settlement-based mechanisms such as negotiation, mediation, conciliation etc.; private adjudicatory mechanisms such as arbitration; hybrid and flexible mechanisms such as ombudspersons, grievance redressal officers, med-arb, online dispute resolution etc. Therefore, ADR does not refer to a single uniform mechanism, but a range of dispute resolution options available to disputing parties, outside court.
- 1.2. Dispute Prevention and Dispute Resolution are the chief objectives of any ADR. While parties resort to litigation upon a conflict being escalated to a full-fledged dispute, ADR options can be designed to prevent dispute escalation and further resolve any disputes through voluntary settlement or private adjudicatory mechanisms. Therefore, this Policy encourages the adoption and use of ADR to prevent and resolve government disputes, mainly through following main recommendations:
  - 1.2.1. This Policy recommends establishment of a Dispute Resolution Board in each Department. Most individual officers hesitate from ADR settlement processes, as they apprehend false allegations of underhanded settlements. It is therefore recommended that any settlement be authorized by and be subject to approval of the Dispute Resolution Board at the Department level.
  - 1.2.2. There shall be an Inter-Departmental Alternative Dispute Resolution Working Group, led by the Office of the Advocate General. The Working Group shall assist each Department in evolving an ADR Strategy and identifying disputes/dispute areas suitable for ADR.

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- 1.2.3. In order to resolve inter-departmental disputes, i.e., disputes arising between two or more State Departments, there shall be an Inter-Departmental Dispute Redressal Committee, headed by the Chief Secretary or Additional Chief Secretary. The Committee shall use suitable ADR mechanisms to address the conflict and resolve disputes, as far as practicable without resort to litigation. The Committee shall also recommend suitable ways of resolving disputes without resort to litigation.
- 1.2.4. In determining suitability of disputes to ADR processes, suitability standards as laid out by the Hon'ble Supreme Court must be adopted to guide identifications of disputes/dispute areas for ADR.

## 2. Typology of ADR Mechanisms

- 2.1. To design a suitable system or opt for a suitable ADR process, Stakeholders must be aware of the range of ADR options. The following Tables offer a non-exhaustive typology of ADR mechanisms. The Tables provide a starting point, from which stakeholders can develop suitable ADR system designs for their disputes/dispute areas.

**Table A: Voluntary Settlement-Based ADR Mechanisms**

ADR Mechanism	Nature and Core Features	Relevant Law
Negotiation	<p>Negotiation is a voluntary, settlement-based process, where parties directly negotiate with each other and explore the possibility of settling the dispute on mutually agreeable terms.</p> <p><u>Core Features of the Process:</u> Party autonomy (self-determination), voluntariness and confidentiality. Final agreement is final and binding on the parties.</p>	Section 89 and Order 23 Rule 3 of Code of Civil Procedure, 1908
Mediation	<p>Mediation is a voluntary, settlement-based process, where a neutral third-party mediator, assists parties in arriving at a settlement.</p> <p><u>Core Characteristics of the Process:</u> Party autonomy (self-determination), voluntariness and confidentiality. Final agreement is final and binding on the parties.</p>	Section 89 and Order 23 Rule 3 of Code of Civil Procedure, 1908; Karnataka Civil Procedure

	(Mediation) Rules, 2005; See also Section 12A of the Commercial Courts Act, 2015; Commercial Courts (Pre-institution Mediation and Settlement) Rules, 2018; Chapter V of the Consumer Protection Act, 2019	
Conciliation	Conciliation is similar to mediation, where a neutral third-party conciliator assists parties in arriving at a settlement. The Conciliator also puts forth settlement proposals for the parties to consider during the process.  <u>Core Characteristics of the Process:</u> Party autonomy (self-determination), voluntariness and confidentiality. Final agreement is final and binding on the parties	Section 89 and Order 23 Rule 3 of Code of Civil Procedure, 1908; Part III – Arbitration and Conciliation Act, 1996
Judicial Settlement and Lok Adalat	The term judicial settlement refers to a voluntary settlement of a dispute with the help of a judge who has not been assigned to adjudicate upon the dispute. The matter is referred to judicial settlement only when parties show interest to settle dispute and give their consent.  <u>Core Characteristics of the Process:</u> Party autonomy (self-determination), voluntariness. Final agreement is final and binding on the parties	Legal Services Authorities Act, 1987 and the Karnataka State Legal Service Authority Rules, 1996

Dispute Review Boards/ Dispute Adjudication Boards	<p>Dispute Review Boards is a board constituted before the commencing of the construction projects by including a clause in the contracts in construction projects. The Board may consist of neutral third-party mediators and also experts.</p> <p><u>Core Characteristics of the Process:</u> Party autonomy (self-determination), voluntariness and confidentiality. Final agreement is final and binding on the parties</p>	Dispute Review Boards are set up by virtue of a contract between the parties. Parties usually contractually bind themselves to the process and outcome of the Board.
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**Table B: Private Adjudication/Determination (Consensual Submission of Dispute, Binding Outcome)**

ADR Mechanism	Nature and Core Features	Relevant Law
Arbitration	Arbitration is an adjudicatory procedure that applies to disputes only when parties voluntarily consent to resort to arbitration. The dispute is adjudicated by an arbitrator (or a panel of arbitrators) appointed by the parties, concluding with a final arbitral award that is binding on the parties. The proceedings and final arbitral award are confidential.	Arbitration and Conciliation Act, 1996
Expert Determination	<p>Expert Determination is an ADR process where the parties contractually agree to appoint an independent third-party expert to make a determination of the dispute, which is binding on both parties.</p> <p>Expert Determination is a suitable option for valuation disputes and disputes involving technical questions for determination.</p>	<p>Parties are contractually bound by Expert Determination.</p> <p>Enforcement of the determination would be in the same form as enforcement of contract.</p>

**Table C: Hybrid/Flexible Mechanisms**

Med-Arb	This hybrid process involves a two-step or multi-step procedure of resorting to mediation and arbitration at different stages to resolve the process.	
Mini trial	This is akin to mediation, where a highly experienced professional hears the dispute, much like a brief trial from both sides, and offers advice on settlement to the parties.	
Ombudsperson	Ombudsperson are offices or single officers, who address complaints against certain authorities. The functions of the Ombudspersons are determined through rules. Various models are adopted by different regulatory authorities to determine the functions of the ombudspersons. For instance, the Banking Ombudsman and Insurance Ombudsman in India provide that the Ombudsman act as both the mediator and the adjudicatory authority to resolve complaints. Ombudsperson such as Lokpal or Lokayukta act as inquiry authorities to inquire on complaints on abuse of power by governmental authorities.	See for example, Insurance Ombudsman Rules, 2017; Banking Ombudsman Scheme 2006; and Lokpal and Lokayukta Act, 2013
Early Neutral Evaluation (E.N.E.):	An experienced neutral party is appointed to evaluate the facts, evidence, claims, defences to provide an opinion at an early stage to avoid expensive litigation.	
Online dispute resolution	Online dispute resolution is one of the methods of settling disputes outside of the courts, by combining technology and ADR. It is a fast-developing mechanism, offering potential to resolve disputes faster and at scale.	

### 3. Benefits of ADR

3.1. ADR mechanisms generally offer broad ranging procedural and outcome benefits to stakeholders. While benefits are mostly dependent on the specific ADR mechanism, it is useful to consider how ADR in general, positively contributes to the dispute resolution process:

3.1.1. ADR mechanisms provide systemic relief to courts by diverting cases away from litigation towards alternative processes. Since the government is the biggest litigator, resolution of government disputes through ADR will also contribute to relieving the burden of the legal system.

- 3.1.2. The flexibility of ADR processes fosters speedy resolutions and speedy justice, contributing to efficient dispute management and disposal. When employed effectively, ADR also lowers costs of disputes, particularly when compared to time and costs involved in waging protracted legal battles.
- 3.1.3. ADR processes and designs assist dispute prevention objectives. Mediation, conciliation, grievance redressal and consultation processes are instrumental in early stage conflict management, thereby preventing escalation of disputes. Further, arbitral awards and mutually agreed settlements attain a great degree of finality under law, with very narrow scope for further disputes by appeals etc.
- 3.1.4. ADR processes can be more suited and responsive (than litigation) for the requirements of certain disputes and parties. Negotiation and mediation processes allow interest-based settlement. Arbitration allows ease in trial and evidentiary process and offers a better forum for complex disputes and disputes requiring subject-matter expertise. ADR designs also allow collaborative decision-making and resolution. Therefore, ADR is more suited for parties for whom quick negotiated agreements offer better solutions than litigation; for parties interested in maintaining working or business relationships, while resolving conflict (example, service and workplace dispute); and for parties who benefit from collaborative decision-making to resolve conflict than from an adversarial process.
- 3.1.5. ADR can increase party satisfaction with process and outcome. While litigation functions in a standard and rigid environment, ADR mechanisms can be more flexible to incorporate and address the interests of the party, thereby increasing their satisfaction in the process and outcome.
- 3.1.6. ADR processes allow growth opportunities for parties. Collaborative, communicative, and problem-solving features of ADR provides the government with opportunities to rework and re-design executive, policy and regulatory decisions and protocols. This can prevent floodgate of future litigation on the same issue.

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#### 4. Government Disputes and ADR: Overcoming Perceived Obstacles

4.1. Despite the above benefits, Stakeholders have not resorted to ADR in government disputes. This is despite the policy commitment under the Karnataka Litigation Policy, 2011 as well as the National Litigation Policy, encouraging use of ADR in managing government disputes. Consultations with stakeholders revealed certain perceptions that acted as obstacles in their way of employing ADR mechanisms for government disputes. It is important to address and respond to these perceived obstacles and suggest measures to overcome them:

- 4.1.1. Perceived Obstacle: *ADR is inherently unsuitable for the public nature of government disputes and government's functions*

Response: It is important to distinguish between disputes of public importance and disputes where government is merely an involved party. Government is a party to various contracts, commercial transactions, employment agreements, individual permits etc., where it only transacts with individuals and addresses private interests. Further, government disputes also include several intra-department and inter-department disputes, disputes between PSUs and Department etc. These offer opportunities to introduce suitable ADR mechanisms. The suggested measure to overcome this obstacle is to first understand the scope and suitability of each ADR mechanism, (for example, for arbitrability, refer to the law laid down by the Hon'ble Supreme Court); and thereafter systematically identify disputes or dispute areas suitable for ADR. Dispute Prevention mechanisms such as multi-stakeholder initiatives, public consultations, etc., are also suitable for certain government disputes.

- 4.1.2. Perceived Obstacle: *Choice to resort to ADR is not in government's control (since government is the respondent in most cases and the petitioner has already chosen litigation).*

Response: The fact that government is the respondent in majority of pending cases, must not prevent the government from attempting and incorporating ADR suitably. Two recommendations tackle the said obstacles: first, dispute prevention and early conflict redressal measures at the Department level, to prevent as many disputes reaching courts. (Consider grievance redressal systems, Ombudsman, mediation, ADR clauses in contracts etc.). Second, since courts are always

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encouraging of settlement, Law Officers and concerned Departments must express willingness and commitment to explore possibilities of ADR for suitable cases.

- 4.1.3. Perceived Obstacle: *Individuals representing the government do not have authority to negotiate or agree to terms on government's behalf. Further, any agreement entered into by an individual officer, is vulnerable to attack as an underhanded deal.*

Response: This is a common concern across all Stakeholders and is most prevalent in exploring voluntary settlement-based ADR, such as mediation/negotiation. Given that most Stakeholder offices are hierarchical, and require approvals at various levels, individual officers (e.g., briefing officers/LCOs in Departments; Government Advocates/Pleaders in government Law Offices) are hesitant to assume authority to enter settlements on behalf of the government. This is a valid concern: most voluntary settlement-based processes are only effective if the parties at the mediation/negotiation table are those with authority to negotiate. However, measures can be taken to overcome this obstacle. It is important to develop pre-determined protocols and structures to assure authorization and accountability in the ADR process. This Policy recommends the constitution of **Dispute Resolution Board in each Department**. The Board shall be constituted by Department officers/officials with official decision-making authority in the Department and may also include retired judicial members. The Board will issue authorization and instructions to individual officers and Law Officers, to negotiate on behalf of the Department. Further, any settlement will be subject to review and approval by the Board. The Board shall also ensure that all necessary approvals from other authorities (such as Finance Department etc.) shall be taken before entering into the settlement. This will ensure effective authorized participation, maintain accountability of the entire Department, while also protecting individual officers from baseless allegations. In fact, such an authorization process is also endorsed recently by the Hon'ble Supreme Court in *National Co-operative Development Corporation v. Commissioner of Income Tax, Delhi*.<sup>12</sup>

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<sup>12</sup> Civil Appeal Nos. 5105-5107/2009 dated 11-09-2020. It was observed: *We are of the opinion that one of the main impediments to such a resolution, plainly speaking, is that the bureaucrats are reluctant to accept responsibility of taking such decisions, apprehending that at some future date their decision may be called into question and they may face consequences post retirement. In order to make the system function effectively, it may be appropriate to have a Committee of legal experts presided by a retired Judge to give their imprimatur to the settlement so that such apprehensions do not come in the way of arriving at a settlement. It is our pious hope that a serious thought would be given to the aspect of*

- 4.1.4. Perceived Obstacle: Participation in Voluntary settlement-based ADR will be seen as weakness and settlements will set bad precedent.

Response: This is a misconceived perception without empirical basis. Government Litigation Policy at the central and state levels fortify the legitimacy of ADR, offering adequate motivation to participate in ADR processes. The fact that mediation/negotiation are voluntary processes, based on party-autonomy and interests, indicates that the government also has bargaining powers. This assures that settlement from such processes only results in closure and prevention of floodgate litigation for the government and not a bad precedent.

- 4.2. It is seen that most obstacles discussed above are long held perceptions of Stakeholders, reflective of a legal culture where litigation is predominant and ADR mechanisms are relatively new and untested. Therefore, introducing ADR effectively is also a matter of changing dispute resolution culture. While various measures to change the legal culture are suggested here, the first step is to assess the suitability of ADR mechanisms to disputes or dispute areas.

## 5. Suitability and Identification of Disputes/Dispute Areas for ADR

- 5.1. ADR mechanisms cannot be blindly adopted for all disputes, i.e., irrespective of suitability. Assessing suitability is important for three reasons: first, certain disputes are considered by law to be unsuitable for certain ADR mechanisms; therefore, ADR in such disputes will be legally invalid. Second, ADR mechanisms are only effective when they are suitable to prevent or resolve disputes. Third, each ADR mechanism offers different benefits and Stakeholders will benefit from choosing the right ADR mechanism for their specific structures. Therefore, suitability is an important assessment that leads to identification of areas or disputes for specific ADR processes.

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*dispute resolution amicably, more so in the post-COVID period. In most countries, mediation has proved to be an efficacious remedy and here we are talking about mediation inter se the Government authorities or Government departments. India is now a signatory to the Singapore Convention on Mediation and we understand that a serious thought is being given to bring forth a comprehensive legislation to institutionalise mediation, in furtherance of this function to which India has committed itself.*

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- 5.2. In case of government disputes, there are three stages at which suitability must be addressed. First, suitability of ADR vis-à-vis the government's role and capacity to participate. Second, suitability of the area of dispute for reference to ADR. Third, identifying and choosing the most suitable ADR mechanism for a given dispute or dispute area.
- 5.3. Regarding the first stage, as discussed above, a general perception that ADR itself is not suitable for government disputes is misconceived and must be overcome. In fact, in case of suits by or against the government, the Code of Civil Procedure 1908, specifically mandates the court to encourage settlement. Order XXVII Rule 5B states that in suits against the government, "it shall be the duty of the court" to enable a settlement and also grant additional adjournment in case any such settlement was in progress. Therefore, the law has not only recognized the suitability of ADR for government disputes, but further mandated the court to encourage it. It is therefore recommended that Stakeholders seriously consider these commitments and incorporate ADR mechanisms for government disputes.
- 5.4. Regarding the second stage of suitability, i.e., based on the area of dispute for ADR, it is recommended that Stakeholders incorporate suitability standards subject to the limits laid down by law. For instance, the Hon'ble Supreme Court has evolved the test of 'arbitrability' of disputes, i.e. the suitability of arbitration to specific subject-matter of disputes in several cases.<sup>13</sup>
- 5.5. Arbitrability standards have also been incorporated by several High Courts across the country in referring disputes to ADR.<sup>14</sup> Stakeholders must be guided by the above classification and standard in identifying dispute areas that are suitable for ADR. Each stakeholder Department, in consultation with Law Officers, must undertake the exercise

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<sup>13</sup> See *Avitel Post Studioz Limited and Others v. HSBC PI Holdings (Mauritius) Limited*: 2020 SCC OnLine SC 656; *A Ayyasamy v A Paramasivam & Ors* (2016) 10 SCC 38; *Vimal Kishor Shah & Ors. v. Jayesh Dinesh Shah*, (2016) 8 SCC 788; *Afcons Infrastructure Ltd. and Anr. v. Cherian Varkey Construction Co. (P) Ltd*: (2010) 8 SCC 24; *Booz Allen & Hamilton Inc. v. SBI Home Finance Ltd*: (2011) 5 SCC 532; *Emaar MGF Ltd. v. Aftab Singh*, 2018 SCC OnLine SC 2378; *Suresh Shah v. Hipad Technology India Pvt Ltd*: (2020) SCC Online SC 1038; *Vimal Kishor Shah v. Jayesh Dinesh Shah* (2016) 8 SCC 788; *Vidya Drolia v. Durga Trading Corporation*: 2019 SCC OnLine SC 358.

<sup>14</sup> See Alternative Dispute Resolution and Mediation Rules, 2017 (Andhra Pradesh and Telangana); Alternative Dispute Resolution Rules, 2004 (Rajasthan)

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of identifying dispute areas suitable for ADR, falling within the Department's jurisdiction. This exercise will reveal the dispute population which is available for ADR.

- 5.6. Once that identification is complete, the third stage of suitability involves matching the dispute or dispute area with the most suitable ADR mechanism. Some disputes may be better determined by private adjudication such as arbitration, while certain disputes are better resolved through a voluntary facilitative settlement-based process. To ensure a smart adoption of the right ADR mechanism, stakeholders, particularly Departments, must develop a suitable ADR strategy that aims at dispute prevention as well as dispute resolution. The following section offers recommendations on the considerations to be employed while choosing ADR mechanisms.

## **6. Incorporating ADR in Government Dispute System**

- 6.1. In government disputes, ADR can be incorporated at two levels – first, at the Department level, where the conflict emerges (in case of inter-departmental disputes, ADR can be incorporated at the time that the conflict emerges between departments); secondly, at adjudication level, where the conflict is escalated and involves Law Officers representing the government. Two objectives must drive each of these two levels: dispute prevention and dispute resolution. It is recommended that there is an ADR strategy developed by Stakeholder Representatives at each of these levels.

- 6.2. In order to resolve inter-departmental disputes, i.e., disputes arising between two or more State Departments, there shall be an Inter-Departmental Dispute Redressal Committee, headed by the Chief Secretary. The Inter-Departmental Dispute Redressal Committee shall be an ad-hoc committee that shall be constituted by such persons as the Chief Secretary or Additional Chief Secretary may appoint, to resolve specific disputes. The Committee shall use suitable ADR mechanisms to address the conflict and resolve disputes, as far as practicable without resort to litigation. The Committee shall also recommend suitable ways of resolving disputes without resort to litigation. For instance, in high-stake or major cases where a Department is considering the suitability of filing appeals or pursuing litigation, the Committee shall assist in providing its opinion on ADR alternatives to resolve the dispute and end the conflict.

6.3. Each Stakeholder Department shall develop an ADR Strategy and ensure its implementation. The said ADR strategy shall be outlined and documented in each Department's ADR Policy and/or ADR Plan. There shall be an Inter-Departmental Alternative Dispute Resolution Working Group, led by the Office of the Advocate General and consisting of representatives of each State Department, government Law Officers, and dispute resolution experts (among lawyers, mediators, arbitrators and other professionals). The Working Group shall assist and facilitate each state Department in framing and implementing its ADR strategy. The Working Group may further create sections for implementation of ADR in specific subject areas, especially those that involve multiple state Departments. For example, a section on commercial contracts may involve the Department of Industries and Commerce, Mines and Geology Department etc.

6.4. In addition, the Office of the Advocate General shall also incorporate ADR commitments of Law Officers into the ADR Strategy, to ensure that Law Officers identify ADR opportunities and implement them.

6.5. In formulating the ADR strategy and drafting the ADR Policy and Document, the following shall be considered as necessary components:

6.5.1. Policy Commitment: Each Stakeholder shall express a policy commitment to incorporate ADR suitably. This policy commitment may be expressed in the ADR policy document of each Stakeholder or by making a Policy Statement. Further, as part of its ADR strategy, each Stakeholder Department must consider how to include ADR in the draft legislations and policies under its jurisdiction.

6.5.2. Contractual Commitment: Each Stakeholder shall consider the inclusion of ADR clauses in government contracts. The clause may indicate at a single ADR mechanism (eg: single option to arbitrate) or lay out a multi-level ADR structure (eg: first negotiate; on negotiation failure, attempt third party mediation; on mediation failure, resort to adjudication). ADR strategy documents must advise and provide draft templates.

6.5.3. Identification of Disputes/Dispute areas for ADR: Each stakeholder Department shall, in consultation with the Law Officers, identify disputes/ dispute areas that are suitable for ADR. In doing so, a reasonable metric or model may be adopted

to determine which disputes must be referred to ADR. For instance, metrics may be based on value, risk, issues involved, classes of parties involved etc. Stakeholders will benefit from using the data management system to tag and identify cases suitable for ADR.

- 6.5.4. Dispute Prevention: Each Department shall formulate a suitable dispute prevention plan, to provide early stage conflict resolution. Various mechanisms such as Grievance Redressal Officers, Ombudsperson, Expert Panels, Stakeholder Committees, Mediation etc., are suitable as dispute prevention mechanisms. Each Department shall, with the assistance of the Working Group, evolve a suitable dispute prevention system customized to its requirements.
- 6.5.5. Setting Suitable ADR Models: In adopting an ADR mechanism, Stakeholders shall consider different models in designing the ADR. For instance, in case of Ombudsperson, in some cases, single decision-maker model is adopted with a single Ombudsperson to process all complaint. Some other models adopt an Ombudsperson Panel approach.
- 6.5.6. Participation Protocol in Settlement-Based Processes: As suggested above, the ADR strategy must involve a participation protocol, which eases authorization process and provides a level of immunity to the officer involved in the ADR process. Dispute Resolution Boards aid such participation. ADR Strategy must address such additional protocols.
- 6.5.7. Preserving Foundational Tenets of ADR: Most ADR mechanisms such as arbitration, mediation and negotiation have very set foundational tenets. In mediation, party autonomy, self-determination and neutrality are integral to the process. It must be ensured that these foundational tenets are followed in government disputes. This is also important to consider in designing ADR systems. For instance, today most Ombudsman Schemes, such as Banking Ombudsman Scheme, 2006 and Insurance Ombudsman Scheme provide for the Ombudsman to act both as the mediator and adjudicatory authority on the same complaint. This compromises party-autonomy in the settlement process, for fear of adverse award if a settlement as advised by the Ombudsman is rejected.

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- 6.5.8. ADR Knowledge and Training: In appointment of HLCs and Law Officers, their knowledge of ADR shall be one of the factors for consideration. Further, all Stakeholders shall commit to training programs on ADR to increase learning and share knowledge on incorporating ADR into their systems.
- 6.5.9. Budget and Staffing: Each Stakeholder must determine the budget for the effective implementation of its ADR strategy and make all attempts to seek approval of the budget. Further, each Stakeholder Department must also consider its additional staffing needs to seek the necessary human resource support for its ADR efforts. This must also include designation of dispute resolution experts and counsels to assist in designing the ADR structure or to assist on complex matters.
- 6.5.10. Performance Evaluation of ADR: Stakeholders must ensure that evaluation models on ADR do not merely cover disposal and settlement rates. High disposal rate is not the ultimate objective of ADR, but merely a benefit. Therefore, success evaluation must also be based on whether the foundational principles have been followed in the ADR process. Performance Indicators must therefore be placed to evaluate these considerations as well.
7. While previous litigation policies recommend ADR, Stakeholders have failed to adequately resort to ADR, since there has been no commitment towards systematic strategy and implementation. It is necessary that ADR for government disputes is not merely a paper goal but an implementable measure and a strategic choice. Therefore, Stakeholders must focus on rigorously implementing the recommendations in this chapter to make real progress in adopting ADR for government disputes.

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## CHAPTER VIII

### IMPLEMENTATION OF THE POLICY

1. This Policy aims to promote its goals of efficiency, responsibility and accountability, through implementable recommendations. Policy statements without accounting for implementing considerations, will result in this policy being merely a paper document and offering hollow hope. While the entire policy lays out specific recommendations and outlines the reasoning and the context underlying them, this Chapter identifies key recommendations and implementing agencies.

#### **2. Applicability**

2.1. The Policy is applicable to Stakeholders as described in Chapter 2. This Chapter must be referred to in identifying and clarifying specific implementing obligations.

#### **3. Monitoring Implementation of the Policy**

3.1. There shall be an Empowered Committee responsible for:

- Monitoring the overall implementation of the Policy.
- Building awareness and training relevant stakeholders about the Policy.
- Reviewing budget allocation and plan towards implementation of the Policy.
- Making recommendations for better implementation of the Policy.

#### **4. Publication and Awareness Building**

4.1. The State Government must ensure wide publication of the Policy (paper and online) and open access to online versions.

4.2. Empowered Committee must ensure awareness of the policy amongst all Stakeholders.

4.3. Stakeholder Representatives must ensure that their office/Department and individual actors in their respective office/Department are aware of and have access to the Policy.

#### **5. Data Management**

5.1. Stakeholder Representatives must create data management strategies incorporating, the following minimum components:

- Systematization of data collection, record keeping and data organization.
- Standardizing information exchange between stakeholders.
- Establishing standards for access and disclosure.
- Training of relevant officers and stakeholders in data management.
- Analyzing data, for performance evaluation and reviewing functioning.

5.2. Individual actors are also responsible for implementation of the data management systems.

## 6. Use of Technology

- 6.1. IT Cell shall be established, to build technological infrastructure for management of government disputes, in consultation with all Stakeholder Representatives.
- 6.2. Stakeholder Representatives shall ensure suitable technological infrastructure functioning within their respective Departments/offices.
- 6.3. In designing the technological infrastructure, the IT Cell/ Stakeholder Representatives shall follow policy recommendations concerning (i) Design Factors (ii) Data Management (iii) Workflow Management.

## 7. Performance Evaluation

- 7.1. Empowered Committee is in charge of evaluating overall performance of Stakeholders in accordance with the policy.
- 7.2. Internal Performance Evaluation by Stakeholders must be guided by:
  - a. Establishment of Performance Indicators by each Stakeholder Representative.
  - b. Performance Assessment based on two broad categories: (i) Budget and Spending; (ii) Operations.

## 8. Improving Conduct of Disputes in State Departments

### 8.1. Process-oriented reform recommendations to be implemented by the Heads of Departments in consultation with the Law Officers:

- a. Undertake Risk Analysis to gauge likelihood of outcomes and impact of disputes.
- b. Ensure efficient Workflow Management by guiding and monitoring work allocation.
- c. Devise Dispute Strategies.
- d. Appoint Nodal Officers.
- e. Enhance Quality of Representation:
  - In appointing Law Officers, the appointing authority shall ensure that such appointment is fair, reasonable, transparent, non-discriminatory and credible, in accordance with the decisions of the Hon'ble Supreme Court.
  - Supervisory Officers/Authorities shall periodically conduct review of the work of the concerned Law Officers under their supervision.

- At a functional level, each Law Officer must be updated with legal knowledge and adept at legal strategy to provide high-quality representation to the government before courts and ADR forums.

#### **9. Adoption and Incorporation of Alternative Dispute Resolution**

- 9.1. Each State Department shall set up a Dispute Resolution Board to authorize ADR representation and approve settlement terms on Department's behalf.
  - 9.2. Each Department shall evolve an ADR Strategy. There shall be an Inter-Departmental Working Group led by the Advocate General to assist Departments in creating and implementing the ADR Strategy.
10. This Policy aims at creating an efficient, responsible and accountable government dispute system, by making implementable recommendations. It is hoped that this Policy will be used as the necessary impetus for Stakeholders to rigorously revise, improve and implement their strategies, standards, protocols and practices to achieve the policy objectives. Such implementation will ensure that participation, management and conduct of government disputes naturally serves public interest.

**By Order and in the name of the  
Governor of Karnataka,**

**-sd/-**

(R. VIJAYAKUMARI)  
Under Secretary to Government (Admn.-1),  
Law Department.